

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,) Docket No. 14 CR 447
)
Plaintiff,))
)
vs.)
)
HAKEEM EL BEY,) Chicago, Illinois
) September 11, 2015
Defendant.) 10:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HONORABLE RICHARD A. POSNER

APPEARANCES:

For the Plaintiff: HON. ZACHARY T. FARDON
United States Attorney
BY: MR. CHRISTOPHER P. HOTALING
MS. KATHRYN E. MALIZIA
219 S. Dearborn St., Suite 500
Chicago, Illinois 60604

For the Defendant: MR. HAKEEM EL BEY, Pro Se

For the Defendant as
Standby Counsel: JENNER & BLOCK LLP
BY: MR. GABRIEL A. FUENTES,
353 North Clark Street
Chicago, Illinois 60654

Also Present: MS. SANDRA DeNICHOLAS, Probation

Court Reporter: MR. JOSEPH RICKHOFF
Official Court Reporter
219 S. Dearborn St., Suite 1232
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PROCEEDINGS RECORDED BY
MECHANICAL STENOGRAPHY
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1 THE CLERK: 14 CR 447, USA vs. Hakeem El Bey. For
2 status.

3 MS. MALIZIA: Good morning, your Honor, Kathryn
4 Malizia and Christopher Hotaling on behalf of the United
5 States.

6 THE COURT: I'm sorry?

7 MS. MALIZIA: Good morning, your Honor, Kathryn
8 Malizia and Christopher Hotaling on behalf of the United
9 States.

10 MR. HOTALING: Good morning, your Honor.

11 MS. DeNICHOLAS: Good morning, your Honor.

12 MR. FUENTES: Gabe Fuentes, standby counsel, present
13 for the defendant as standby counsel.

14 MS. DeNICHOLAS: Good morning, your Honor, Sandra
15 DeNicholas from the Department of Probation.

16 THE COURT: Okay.

17 So, Mr. El Bey, I regret having to issue a drag order
18 to bring you here, but you have to obey the Court's orders. I
19 had ordered you to appear yesterday for the status conference.
20 Your no-show wasted my time, time of the law clerks, time of
21 the stenographer and courtroom deputy, marshals' time, the
22 time of the prosecutors, time of the standby counsel
23 Mr. Starsky (phonetic), who was substituting for Mr. Fuentes
24 yesterday.

25 You know that failure to obey a Court order can lead

1 to a separate punishment for contempt of court, longer
2 sentence on the original charges on the ground of disrespect
3 for the law and the likelihood, therefore, of future criminal
4 acts.

5 THE DEFENDANT: Well, Judge, you said that the court
6 was on September 17th. So, that's the date I was looking for,
7 September 17th.

8 THE COURT: Yes, but I had set the sentencing -- this
9 status hearing for yesterday --

10 THE DEFENDANT: I've never heard anything --

11 THE COURT: -- and you were ordered --

12 THE DEFENDANT: It's the first time I'm ever hearing
13 this. I never heard anything about a status or --

14 THE COURT: What, no one gave -- he was not provided
15 with the order?

16 THE DEFENDANT: I haven't have any paperwork. No one
17 sent me anything.

18 THE COURT: Is that true?

19 THE DEFENDANT: So, I don't know anything about
20 what's going on. So, if I'm -- if I'm -- if I'm defending
21 Hakeem El Bey, then I need to know what's going on. And no
22 one's telling me anything, so I don't know anything.

23 So, if you said the 17th, then I'm set for the 17th,
24 and not for the 9th or the 10th. So, I don't see how I
25 violated anything if I didn't know.

1 THE COURT: Is that true? Mr. El Bey didn't get
2 the --

3 MS. MALIZIA: Your Honor, it's very possible the
4 Court may have mailed him notice, but I can't say whether or
5 not he would have received it in Kankakee.

6 THE DEFENDANT: I haven't received -- they hadn't
7 sent anything to me in Kankakee and definitely not at my house
8 because someone's at my house waiting for any mail to come.

9 MR. HOTALING: Judge, this is some of the
10 circumstances, the difficulties that arise when you have pro
11 se defendants. He's obviously at Kankakee.

12 I'm assuming, Mr. El Bey, that you don't have --

13 THE DEFENDANT: But I'm not pro se. I'm sui juris.

14 MR. HOTALING: Okay. Whatever it is that you are --

15 THE DEFENDANT: Okay.

16 MR. HOTALING: -- I'm assuming -- the question really
17 wasn't about so much about that. It's whether or not you have
18 Internet access such that you can consult the docket if you
19 wanted to.

20 THE DEFENDANT: Well, I don't have Internet access
21 locked up.

22 MR. HOTALING: And I think that's probably right,
23 Judge.

24 So, it certainly could have been if the Court
25 ordered -- if the Court mailed him a copy of the order to him

1 at Kankakee, it could -- and that was on Tuesday, it could
2 have been the case that he did not receive it prior to
3 Thursday's court appearance. That's certainly a possibility.

4 THE COURT: Okay. Well, given the possibility, we
5 won't worry about you not showing up yesterday.

6 Now, I have to ask you, Mr. El Bey, whether you are
7 planning to show up at the sentencing hearing next Thursday.
8 You don't have to. You are not required to appear at
9 sentencing. But it's important for you that you come.

10 The reason for that is that at a sentencing hearing,
11 defendant has a right of what's called allocution. And what
12 that means is that before the judge sentences him, he has a
13 right to give an explanation of his situation, his
14 perspective, his understanding of the case, anything that you
15 might think of which would tend to persuade the judge to give
16 a lighter sentence.

17 So, that's the advantage of being at the sentencing
18 hearing.

19 If you're not at the sentencing hearing, you forfeit
20 this right of allocution. So, you really ought to be here.
21 Unlike today, when you were ordered to appear and the drag
22 order made that explicit, you don't have to come to the
23 sentencing hearing. But I would advise you to because it will
24 give you a chance to give a full statement of your position.

25 Now, there's another consequence if you decide not to

1 appear at the sentencing hearing, which is that that would
2 require me to revoke your pro se or, as you call it, sui juris
3 status and direct Mr. Fuentes to represent you. So, if you
4 want to remain pro se, that's another reason for attending the
5 sentencing hearing.

6 So, let me ask you -- I mean, you can take a few
7 minutes to decide if you want, or you can decide tomorrow for
8 that matter -- but do you want to be present at the sentencing
9 hearing next week?

10 THE DEFENDANT: Yeah, I'm pretty sure I'm going to be
11 here.

12 THE COURT: Okay.

13 THE DEFENDANT: Yeah.

14 THE COURT: That's fine.

15 I want to clarify something I said at the bond
16 revocation hearing. I said that you were incapable of
17 representing yourself. And what my exact words were from the
18 transcript, that, "You should have listened to me at the first
19 hearing when I said you needed a lawyer. You're not a lawyer.
20 You're incapable of defending yourself. You live in a dream
21 world."

22 And what worried me is that those words, you know, or
23 that statement I just quoted taken literally might seem to
24 imply that I shouldn't have allowed you to represent yourself.
25 But I didn't mean to say that. I mean, I think you're

1 intelligent. You're lucid, as far as I can tell. You're
2 perfectly normal psychiatrically.

3 What I meant was that because you lack legal training
4 and because you're committed to views about the law that are
5 not valid in the American legal system, you would not be an
6 adequate substitute for a lawyer. And I still think that's
7 true.

8 But you have a right to appear without a lawyer
9 because I don't believe you have a mental defect. And, in
10 fact, just by coincidence, just a week ago the court of
11 appeals, in a case that I had no involvement in at all -- a
12 case called United States vs. Anzaldi -- the court dealt at
13 length with this distinction I've just mentioned between not
14 being really in a good position to defend yourself but, on the
15 other hand, having the right to defend yourself because you
16 are mentally normal.

17 So, what the court said was -- quoting an earlier
18 decision, said -- adherence to bizarre legal theories does not
19 imply mental instability or cognitive defect so great that the
20 district court is required to order a mental competency
21 examination.

22 Now, that earlier case from which this quotation was
23 taken in Anzaldi is a case called United States vs. James and
24 involved a member of the Moorish Science Temple. And the
25 court held that the defendant's reliance on the legal theory

1 that members of the temple, like yourself, have articulated
2 did not require the district court to hold a competency
3 hearing. Because one can be perfectly competent mentally --
4 as I believe you are -- but have ideas that are not recognized
5 as valid in the legal system.

6 Now, another point, I think it would be a benefit to
7 you if you -- if Mr. Fuentes has a chance to speak, to say
8 something at the sentencing hearing. But that's your choice.

9 You'll be able to speak yourself. That's the right
10 of allocution I mentioned. But you can do that and also have
11 the benefit of any additional information, argument, and so
12 on, that Mr. Fuentes would present. And if he says things
13 that you think are helpful, you can adopt them, obviously. If
14 he says things that you disagree with, you can explain that,
15 tell me that at the hearing.

16 So, my question for you, is it okay with you for
17 Mr. Fuentes to make a statement at the sentencing hearing?

18 THE DEFENDANT: No.

19 THE COURT: No. Okay. Well, then he can't.

20 Now, my last point -- this will be a very brief
21 session -- I want to ask the prosecutors and the probation
22 officer whether either the government or the Probation --
23 either the prosecutors or the Probation Service wants to
24 update the sentencing recommendation that you made previously
25 in light of anything that's gone on since?

1 MS. DeNICHOLAS: Your Honor, on February -- I'm
2 sorry. On September 8th, I did file an updated Presentence
3 Report that included information respective to the violation
4 of bond.

5 THE COURT: Do we have that?

6 MS. MALIZIA: I will tender a copy to the Court and
7 to the defendant right now.

8 THE COURT: So, we have that?

9 A LAW CLERK: Yes.

10 MS. DeNICHOLAS: And I did a revised recommendation
11 based on that new information. So, I believe that the
12 prosecutor is going to give the defendant a copy -- hard
13 copy -- right now, just to be sure that he has that.

14 THE COURT: So, has Mr. El Bey gotten your updated --

15 MS. MALIZIA: Your Honor, we just handed him a copy.

16 THE COURT: No, I meant from the Probation Service.

17 MS. MALIZIA: Yes.

18 MS. DeNICHOLAS: That is the report that they handed
19 him, is my report. I did mail it inadvertently to the
20 Metropolitan Correctional Center. So, since yesterday --

21 THE COURT: Right.

22 MS. DeNICHOLAS: -- in court I learned that he was at
23 Kankakee, I doubt that he would have received it by mail at
24 this point. So, the prosecutor --

25 THE COURT: Oh, so you are giving me --

1 MS. DeNICHOLAS: -- brought an extra copy to give him
2 right now.

3 THE COURT: Right now.

4 MS. DeNICHOLAS: Yes.

5 MS. MALIZIA: Yes, your Honor.

6 THE COURT: But do the prosecutors intend to --

7 MS. MALIZIA: Your Honor, we are --

8 THE COURT: -- update their recommendation?

9 MS. MALIZIA: Your Honor, we're in agreement with
10 Probation's recommendation. We will be advocating for the
11 two-level obstruction enhancement at sentencing. In light of
12 the fact that we are in agreement, we will advocate for that
13 orally, as well as the higher Guidelines range. But we are
14 not planning to file anything at this time.

15 THE COURT: That's fine.

16 MS. MALIZIA: Your Honor, the government would also
17 move to unseal Probation's sentencing recommendation.
18 Traditionally, that is under seal unless the Court makes it
19 available to both parties. The government would move to make
20 it available to Mr. El Bey and to the government at this time.

21 THE COURT: So, that's okay with the Probation
22 Service?

23 MS. DeNICHOLAS: Your Honor, we typically object to
24 releasing our recommendation, but that's merely just a policy
25 that we've always had. In this case, I don't have any

1 objection to releasing the --

2 THE COURT: So, that's fine.

3 MS. DeNICHOLAS: -- original and revised
4 recommendation. I think it might be a good idea.

5 THE COURT: That's fine. You can do that.

6 MS. MALIZIA: Thank you, Judge.

7 MR. HOTALING: But it is important that the Court
8 issue an order allowing both parties to have access to the --

9 THE COURT: Okay. I have to issue an order.

10 MR. HOTALING: -- Probation Office recommendation.

11 THE COURT: Okay.

12 MS. DeNICHOLAS: I would include standby counsel, as
13 well, just --

14 MR. HOTALING: Agreed.

15 THE COURT: Providing it to standby --

16 MS. DeNICHOLAS: Providing it to standby counsel.

17 THE COURT: Right.

18 MR. HOTALING: We would agree with that.

19 THE COURT: Is there any other order that I should
20 issue?

21 MS. MALIZIA: I don't believe so, your Honor.

22 THE COURT: Is there anything, Mr. El Bey, that you'd
23 like to bring up?

24 THE DEFENDANT: Well, I'm just -- I just wanted to
25 know -- I know you said the 17th and I know you said so when I

1 denied -- I denied it because it was for the 17th and not the
2 9th. But, you know, I'm getting it now and so -- okay. And
3 the fact that -- again, I have to ask you, Judge, I still
4 haven't seen the warrant.

5 THE COURT: I'm sorry, you haven't, what?

6 THE DEFENDANT: I still haven't seen the warrant.

7 THE COURT: Oh, the warrant.

8 THE DEFENDANT: Yes, sir. I've asked for the
9 warrant.

10 THE COURT: The bench warrant.

11 THE DEFENDANT: And by law, legally you have to show
12 me the warrant if you issue one. And I think it's two weeks
13 that went by, I still haven't received -- I haven't -- is it
14 filed on the case or -- I mean, I haven't seen anything.

15 I'm just saying if you came and got me, if you kidnap
16 me and brought me to this dead man court and you haven't shown
17 me the warrant, I'm just saying that's a violation. I just
18 need to know if you have the warrant. That's all I ask for.
19 Nothing else.

20 THE COURT: Well, at the last conference, our last
21 little meeting --

22 THE DEFENDANT: You told me "No."

23 THE COURT: -- before I issued the bench warrant, I
24 said -- I'm just rereading the transcript. I had said if you
25 wanted to see the warrant, sure, you can see the warrant,

1 right?

2 THE DEFENDANT: No. You told me "No" last time I was
3 in court. Two weeks ago you told me, no, I couldn't see it.
4 I asked you could I see the warrant. That's all I ever asked
5 you for.

6 THE COURT: Well, actually -- well, I said both.

7 So, is there any objection to showing --

8 MS. MALIZIA: Your Honor, we have no objection. We
9 would note, again, that Mr. El Bey -- I'm not really sure what
10 the purpose of showing him the warrant would serve, given that
11 you are present here and telling him that you issued that
12 warrant. I'm not sure if he's questioning that reality. But
13 we can obtain a copy of -- a physical copy of -- the warrant
14 for him if that's your Honor's wish.

15 THE COURT: Yeah, I'd prefer that. It's, obviously,
16 important to him.

17 THE DEFENDANT: I'd like to see it in writing with
18 your -- with your -- signature on it.

19 THE COURT: Yeah.

20 THE DEFENDANT: Not a stamp, but a signature.

21 MR. HOTALING: Okay. Now, wait.

22 MS. MALIZIA: This is -- your Honor, this is where
23 I --

24 MR. HOTALING: He's asking for stuff that's just --

25 THE DEFENDANT: I'm only talking to the Judge. I

1 don't know why they always talk for you and they don't know
2 what you know.

3 Mr. Posner -- Judge Posner -- if I may, your Honor,
4 is it okay if I ask you can I get a copy of your warrant?
5 That's all I wanted to see.

6 MS. MALIZIA: We have one on hand.

7 (Document tendered to the defendant.)

8 MR. HOTALING: He's getting a copy.

9 THE COURT: Is that it?

10 MR. HOTALING: Uh-huh.

11 THE COURT: Okay.

12 MS. MALIZIA: Your Honor, while Mr. El Bey is
13 reviewing the warrant, it may be beneficial before we adjourn
14 today to maybe give him an overview of what the sentencing
15 hearing will entail just in terms of what will be covered.

16 THE COURT: Okay. I think that's a good idea. Yes.

17 (Brief pause.)

18 THE DEFENDANT: But it's not -- it's not -- signed
19 by -- it's not signed by you, Judge.

20 (Brief pause.)

21 MS. MALIZIA: I think maybe Mr. El Bey's source of
22 confusion is that --

23 THE DEFENDANT: I'm not confused. I just asked to
24 see the warrant. That's all I asked. There's no confusion.
25 If you can show it to me, I don't have a problem with it.

1 There's no confusion.

2 MR. HOTALING: So, there shouldn't be a problem
3 because he has it. So, we should be all taken care of.

4 THE DEFENDANT: But it has to be a wet ink signature,
5 and it doesn't have a affidavit, Judge. You know by law --
6 you're a judge. We just talking. By law, it says when a
7 judge issue a warrant, it has to be with an affidavit with a
8 wet ink signature and this is not --

9 THE COURT REPORTER: I'm sorry?

10 THE DEFENDANT: It has to be an affidavit or his oath
11 with a wet ink signature on it or also a wet ink signature
12 with the warrant. This is not a wet ink signature. This is
13 typed. So, this is -- this is -- still is not right. The
14 Judge has to sign it. It has to have his hand -- his
15 autograph on it. So, this is not sufficient enough.

16 But do you mind if I keep this copy, Judge?

17 THE COURT: That's up to the marshal. I don't know
18 whether --

19 THE DEFENDANT: Do you all -- do you mind if I keep
20 it with the rest of my documents?

21 THE MARSHAL: If you don't mind, your Honor, I don't
22 mind.

23 THE COURT: In other words, do you have other copies?
24 It's not your only copy.

25 THE MARSHAL: It's on file.

1 MS. MALIZIA: It's on -- yes.

2 THE MARSHAL: We don't have an objection --

3 THE COURT: That's fine, yes.

4 THE MARSHAL: -- your Honor, if you don't.

5 THE COURT: You can keep them.

6 THE DEFENDANT: Okay. Thank you.

7 MS. MALIZIA: Your Honor, I have here a copy of the
8 probation officer's revised sentencing recommendation, which
9 I'm going to tender to Mr. El Bey right now so he has a copy
10 of the sentencing recommendation at this time.

11 (Document tendered.)

12 MS. MALIZIA: This is pursuant --

13 THE COURT: Is this the original one?

14 MS. MALIZIA: This is pursuant -- do we have the
15 original, as well?

16 MS. DeNICHOLAS: Your Honor, I know that you don't
17 have it. The clerk does not have that. I included the
18 original, all of the justification, in the revised. So, there
19 is nothing additional that would be in that recommendation
20 that is not in this revised recommendation.

21 I can provide a copy, but it is the same information
22 with the additional information in the revised rec. There is
23 nothing that was eliminated in the revised recommendation.
24 So, he has everything that the Probation Office has filed with
25 the Court.

1 THE COURT: So, including the Justice Department's
2 sentencing recommendation?

3 MS. MALIZIA: Your Honor, Mr. El Bey has received, I
4 believe, at this point multiple copies of our sentencing
5 memorandum. We gave it to him in person, and he was also
6 served with it personally when -- before his first sentencing
7 date, when somebody from the Probation Department actually
8 went to his home and handed it to him. So, he is well aware
9 of our position.

10 THE DEFENDANT: Nobody came to my house and handed
11 anything to me.

12 MS. MALIZIA: Your Honor, we are happy to document
13 this in any way that will satisfy Mr. El Bey, but I guarantee
14 you somebody came to his house and handed him those papers.

15 THE DEFENDANT: Someone came to my house and told me
16 to be sure to appear on the court date. That's what they did.
17 They didn't have any paperwork. And, first of all, he had
18 nothing to do with the case, so he shouldn't have been there.

19 If the probation officer who was handling the case
20 should come, then if they want to hand it to me, then hand it
21 to me; but, not through nobody else. But he never brought
22 anything. He only told me to be sure to be there on that
23 court date.

24 MS. MALIZIA: Your Honor, we handed it to him.

25 THE DEFENDANT: He knocked on my door. That's all he

1 did.

2 THE COURT: Wait. One at a time.

3 MS. MALIZIA: Your Honor, we handed it to him. He
4 has a copy.

5 THE DEFENDANT: Well, Judge, I'm telling you I
6 didn't -- he didn't hand me anything. When he came to my
7 house, I didn't even open my door. I opened my front door.
8 My screen was locked. He said, I'm just here because the
9 Probation Officer told me to come see you because you live
10 closer -- you live closer -- to me than her.

11 And, so, he told me, he said, will this be -- I'm
12 here to be sure that you'll be on court on the 22nd. That's
13 all he told me. Then I shut my door.

14 I have no reason to lie about it. I'm not a liar. I
15 stick to what I do because I don't look over my shoulder
16 because I don't do anything wrong. So, when I tell you -- I
17 say what I mean and I mean what I do. So --

18 THE COURT: Of course, the 22nd was set as the date
19 of the --

20 THE DEFENDANT: Yes. He came -- he came -- one week
21 before then.

22 THE COURT: Wait a second.

23 The 22nd was fixed as the day. Remember, there was
24 an initial sentencing hearing scheduled, which you appeared,
25 and you said that the Post Office had held up your mail. As a

1 result, you hadn't had a chance to read the Presentence Report
2 or the government's sentencing memorandum. So, the government
3 said, fine, we'll postpone the sentencing hearing to the 22nd.

4 THE DEFENDANT: Yes.

5 THE COURT: So, you were clearly told at the hearing
6 that there would be a sentencing hearing on July 22nd.

7 THE DEFENDANT: Yeah, I understand that.

8 THE COURT: And you did not show up on July 22nd.

9 THE DEFENDANT: Because you wasn't talking to me. We
10 go over this -- Judge --

11 THE COURT: You were told it would be July 22nd.

12 THE DEFENDANT: But he did. He came two days early.

13 THE COURT: It doesn't matter when he came.

14 THE DEFENDANT: It was on the paper.

15 THE COURT: You were told --

16 THE DEFENDANT: He told you who he was.

17 THE COURT: You were told at the first and the
18 aborted sentencing hearing that the sentencing hearing would
19 be rescheduled for the 22nd. But you didn't show up on the
20 22nd.

21 THE DEFENDANT: I thought it came, El Bey did show
22 up.

23 THE COURT REPORTER: I'm sorry?

24 THE COURT: Excuse me?

25 THE DEFENDANT: He did show up. He filed hisself on

1 the case --

2 THE COURT: Nobody showed up on the 22nd.

3 THE DEFENDANT: But if you talking about Hakeem
4 surname El Bey, no, I didn't show up because you wasn't
5 talking to me. That's not me. So, the one you're talking
6 about on the paper, he showed up. But you --

7 THE COURT: This argument is not going to fly --

8 THE DEFENDANT: Okay. Well, that's fine, Judge.

9 THE COURT: -- that there's two El Beys, the upper
10 case and the lower case.

11 THE DEFENDANT: Okay.

12 THE COURT: That -- it's not going anywhere.

13 THE DEFENDANT: Okay. Well, I understand.

14 THE COURT: As far as the warrant is concerned, if
15 you wish to challenge the legality of the warrant, if you're
16 planning to appeal and you want to ask the court of appeals --
17 where I would have absolutely no connection with any appeal,
18 obviously --

19 THE DEFENDANT: Well, you with the Seventh Circuit.
20 I don't know.

21 THE COURT: No, no. I'm not -- if a court of appeals
22 judge is handling a case in the district court, he isn't
23 allowed to have anything to do with an appeal from his
24 decision. So, that's clear.

25 So, if you decide to appeal -- if you're not happy

1 with the sentence, decide to appeal -- and you want to
2 challenge the legality of the warrant and say that somehow it
3 invalidates the sentence or the conviction or everything,
4 then, of course, you're free to do that. I'm not going to get
5 involved in the warrant at this stage because I want to
6 complete the case with the sentencing hearing.

7 THE DEFENDANT: Okay.

8 THE COURT: Is there anything else that requires
9 discussion at this time?

10 MS. MALIZIA: May --

11 MS. DeNICHOLAS: I do have one issue.

12 THE COURT: Sure.

13 MS. DeNICHOLAS: I am not available next Thursday.
14 I'm going to be on leave. But I have arranged for a colleague
15 of mine -- which we typically do when we're on leave -- to be
16 fully apprised of the case. She's read all of the reports and
17 can answer questions. And we typically don't advise the
18 judges ahead of time if we're going to be on leave, but I do
19 know that this is kind of a unique case. So, I thought I
20 would mention that to your Honor just for information.

21 THE COURT: Sure. That's fine. That's fine.

22 MS. DeNICHOLAS: Thank you.

23 MS. MALIZIA: Your Honor, again, as we discussed,
24 maybe it would be helpful to Mr. El Bey if we talked --

25 THE COURT: Yes. I'm sorry. Yes.

1 So, Mr. El Bey, Ms. Malizia wants to explain the
2 procedure at the sentencing hearing. That will help you to
3 prepare your own response.

4 THE DEFENDANT: Okay.

5 MS. MALIZIA: So, Mr. El Bey, the first thing the
6 Court will do is address the Sentencing Guidelines. These are
7 discussed in the filings by Probation. They're discussed in
8 our sentencing recommendation, as well.

9 There's also -- I mean, there's a book that I imagine
10 would probably be available to you at Kankakee that sort of
11 explains how we arrive at our sentencing recommendation and
12 the recommendation that the Judge will make based on the
13 nature of the offense, your criminal history -- you actually
14 have none -- and other factors, such as the fact that you
15 refused to show up for your second sentencing hearing.

16 All of these come into play in calculating what is
17 called the recommended Sentencing Guidelines range.

18 Now, the Judge will explain that it's just an
19 advisory range and he can decide to go above that range or
20 below that range, but it's helpful in guiding the Court. It's
21 helpful in guiding you in sort of the kind of sentence you may
22 be looking at.

23 Once the Judge has made a finding about which
24 Guidelines apply based on your offense and your background,
25 the parties can argue something called the 3553(a) factors.

1 That's a statutory term. It's a technical term. It just
2 means that we talk about your background, your history, the
3 offense in this case, the proceedings in this case, other
4 factors such as the need to deter people like you from
5 committing crimes like this again, factors in mitigation, such
6 as the fact that you've been mostly cooperative with the Court
7 with the exception of recent events. All of these are factors
8 that the Court can consider in setting your sentence.

9 We will speak. You'll speak. Mr. Fuentes can speak,
10 if you give him the opportunity. Once that's done, you can
11 also make a statement on your own behalf, talking about your
12 offense, talking about yourself, talking about what you think
13 you deserve to receive as punishment in this case.

14 The Court will also address something called
15 supervised release conditions. These are the conditions that
16 will apply if you receive a term of what's called supervised
17 release after a term of imprisonment. These are -- and,
18 again, Probation can speak to this better than I can, but
19 these are restrictions on your ability to in some cases
20 travel, in some cases to assume new lines of credit.

21 You'll be required to report to the probation officer
22 on a regular basis so they can keep track of if you're paying
23 restitution, for example. You were found guilty of defrauding
24 the IRS of \$600,000, and I imagine that restitution will be
25 ordered in this case. So, they'll be monitoring that.

1 The Court will also address forfeiture. As you're
2 aware, the government has moved to forfeit your home and a car
3 that you purchased with the proceeds of your fraud. A
4 preliminary order of forfeiture that you've been served with
5 has been entered against you.

6 If the Court -- at the end of the sentencing, the
7 Court, I imagine, will very likely enter -- make that order
8 final as to you, allowing the government to seize those assets
9 as restitution -- to satisfy the restitution in this case.

10 That's a basic overview of what's going to happen
11 next week.

12 THE DEFENDANT: Okay.

13 THE COURT: Let me amplify that just a little bit.

14 So, Congress will fix a maximum sentence for each of
15 the different -- for all crimes. And if you remember the
16 first hearing we had where Ms. Malizia explained that the
17 maximum sentence if you're convicted on all eight counts, as
18 you were, of 160 years, that's the statutory max. Obviously,
19 I'm not going to impose a sentence remotely like that. But
20 that's the congressional limit.

21 These Sentencing Guidelines that she mentioned,
22 there's a United States Sentencing Commission which tries
23 to -- because as in this case, because the range -- often
24 there's no minimum statutory sentence and the maximum
25 statutory sentence may be very long. So, rather than let

1 the -- rather than the judge just wallowing in this enormous
2 range trying to pick out a sentence, the Sentencing Commission
3 lays out Guidelines and its conception of what a more sensible
4 range than the statutory range would be.

5 But as Ms. Malizia pointed out, not only is the judge
6 not bound -- required -- to impose sentence within that range,
7 he has to actually consider other factors before deciding
8 whether to stay within the range. Those are the factors that
9 are in a section of the federal code called 18 U.S.C. 3553(a).
10 And I'll go over them with you at sentencing.

11 As I emphasized and as Ms. Malizia mentioned, you'll
12 have a chance to make your own statement and you will have to
13 accept what I say.

14 This reference to supervised release, this is an
15 unfortunate feature of federal law, which is that in the olden
16 days, there was something called parole. There is still a
17 little residual parole, but rarely applicable in federal
18 cases. And parole, after a person has served a portion of a
19 prison sentence, the probation -- the Parole Commission might
20 decide, well, this person has been well behaved and looks
21 unlikely to commit further crime, so we'll recommend that he
22 be allowed out early. That's what we used to have. We don't
23 have that anymore.

24 Now, for most crimes, including this fraud, now --
25 so, the current system that replaced parole is that at

1 sentencing, the judge is supposed to decide -- now, sometimes
2 there's some mandatory supervised release conditions, but
3 usually it's discretionary -- often discretionary. So, the
4 judge decides what kind of restriction should I place on the
5 defendant when he's released from prison. So, for example, if
6 the defendant had a drug problem, the judge might say when you
7 complete your sentence, you're going to have to take a drug
8 test every month or something like that, not associate with
9 certain people, and so on.

10 So, the government will be recommending some
11 conditions of supervised release; but, unless any of them are
12 mandatory, it's up to me whether I impose any or what I impose
13 or what.

14 So, I don't know, that's all I can think of.

15 MS. MALIZIA: Mr. El Bey, do you have any questions?

16 THE DEFENDANT: No.

17 THE COURT: Okay.

18 MS. MALIZIA: All right, your Honor. I think that's
19 it.

20 MR. HOTALING: Thank you, Judge.

21 THE COURT: That's it.

22 Okay. Well, I'll see you all next week.

23 MS. MALIZIA: Thank you, Judge.

24 MR. FUENTES: Judge, if I may?

25 THE COURT: Mr. Fuentes, yes.

1 MR. FUENTES: Obviously, with the defendant declining
2 the Court's suggestion that I say anything at the sentencing,
3 I will not say anything at the sentencing.

4 I suppose as an officer of the Court, I see this as a
5 little bit of a unique case where you have -- the Court has --
6 the resources of standby counsel who sat here through the
7 proceedings, prepared every examination, cross-examination,
8 closing argument, only not to give them. And, Judge, this has
9 not been easy being standby counsel.

10 THE COURT: I know.

11 MR. FUENTES: I've asked for relief, I think, four
12 times from the appointment.

13 THE COURT: Right. I know. I understand.

14 MR. FUENTES: I'm not asking for that now.

15 THE COURT: I'm sorry about that.

16 MR. FUENTES: Please don't apologize. We said yes --
17 I said yes -- because I want to be of service to the Court.

18 So, I think at this point having gone this far --
19 and, actually, I would be here through the sentencing -- my
20 thought, Judge -- and it's just a suggestion or an offer -- is
21 that if the Court wished to at this time relieve me of the
22 standby counsel appointment and appoint me as, in effect, an
23 amicus, I would be willing to speak to the Court at the
24 sentencing. We'd be willing to do that if it's something the
25 Court wishes to do.

1 And that's all I had to say, Judge. If the Court's
2 going to do that, I think it should happen today with the
3 sentencing next week so that I may prepare.

4 THE COURT: So, Mr. El Bey, an amicus curiae means
5 friend of the court. And sometimes the court will appoint a
6 lawyer -- he's not the lawyer for a party to the case, but
7 he's someone that the court thinks can help the court make up
8 its mind about some ruling. And it's very common. We have
9 amicus curiae briefs in the court of appeals. And the Supreme
10 Court, because it has such a light caseload, will often allow
11 like a hundred amicus curiae briefs to be submitted.

12 So, unless the government objects, I'd be happy to
13 let Mr. Fuentes be an amicus curiae. And, you know, Mr. El
14 Bey, unless you think he'll say something harmful to you --
15 again, he won't be your lawyer; it won't change your status as
16 a pro se or sui juris -- it might be helpful. It's certainly
17 not going to be harmful to you. But I don't want to permit it
18 if you're going to feel that it's inappropriate.

19 THE DEFENDANT: No, no, I don't have a problem with
20 that. He know I don't have a problem with that.

21 MS. MALIZIA: I guess, your Honor, our concern would
22 be if Mr. Fuentes were taking an advocacy position on Mr. El
23 Bey's behalf, I guess we could contemplate if Mr. Fuentes
24 feels strongly about maybe the proceedings as a whole or maybe
25 the integrity of these proceedings, that would call for an

1 amicus appointment. But if he's going to be advocating for
2 Mr. El Bey, I guess I just am confused how that's any
3 different than him serving as his standby counsel.

4 MR. FUENTES: If I may, Judge?

5 THE COURT: Yes, sure.

6 MR. FUENTES: I think it's different from standby
7 counsel in the sense that standby counsel has, in effect, been
8 muzzled on one level and, on another level, we have a case
9 where the defendant -- and the Court may say by the
10 defendant's choice -- the defendant is maintaining a legal
11 position that the Court has declined to entertain, to put it
12 politely.

13 And the result of that has been that, in effect, the
14 defendant has been voiceless. And, so, the proceedings have
15 been extraordinarily one-sided. And I say that not as a
16 criticism of any of the actors. But they've been
17 extraordinarily one-sided.

18 Now we're approaching the sentencing where an amicus
19 appointment offers the Court with the opportunity to hear, so
20 to speak, another side of the story. So, I think probably
21 what I would have to say probably could be characterized as
22 what a defense counsel might argue from a Guidelines and a
23 federal law sentencing perspective if the defense counsel were
24 in the case. That's what I'm suggesting may be a benefit to
25 the Court, if the Court wants it.

1 So, I think Ms. Malizia is correct. I would be
2 advocating positions that probably would not be in agreement
3 with a 57-month sentence; probably would not be in agreement
4 with 28-month sentence; probably would argue far less than
5 that. So, I want to be transparent about that, Judge.

6 I think there's a certain uniqueness to this case.
7 Many defendants -- some defendants have these Moorish beliefs,
8 come in, perhaps go to trial, perhaps get sentenced, and don't
9 get the benefit of a friend of the court on some of these
10 issues. And maybe there's an issue for the Court there.

11 But this is a case where you have somebody who's been
12 here and heard it all.

13 THE COURT: I'm sorry, who's what?

14 MR. FUENTES: Who's been here and who's heard it all
15 and has reviewed documents, some of which, I think, are
16 relevant to the sentencing.

17 And, so, I don't think it's an abuse of the Court's
18 discretion to appoint me as amicus if the Court wishes to do
19 so.

20 But very clearly, it would be a voice that's
21 different from the government voice that the Court's been
22 hearing and different from Mr. El Bey's voice, which I assume
23 will be heard, as well.

24 THE COURT: Of course.

25 MR. FUENTES: And, so, that's how I think that would

1 play out, Judge. I'm just trying to be responsive to the
2 government and transparent.

3 THE COURT: Well, since Mr. El Bey doesn't object, I
4 think that's fine. Of course, the government will have a
5 chance to say whatever it wants.

6 MS. MALIZIA: Your Honor, just to put it on the
7 record, we do object to this appointment. We understand
8 Mr. Fuentes' concerns; but, traditionally an amicus is
9 appointed when a third-party has an interest in the
10 proceedings but doesn't actually have standing. That's
11 certainly not the case here.

12 Mr. Fuentes has just stated on the record that he
13 would be advocating on Mr. El Bey's behalf. He would be
14 taking an advocacy position on behalf of defendant, not a
15 third party, not even on the Court or in the interest of
16 protecting this tribunal in some way. And that's our concern.

17 THE COURT: But it's not correct that amicus --
18 amicus curiae is only -- is only representing his own interest
19 because we've often appointed an amicus curiae to assist in a
20 case involving a pro se. Amicus curiae like Mr. Fuentes, not
21 someone who has some -- his own client might somehow be
22 affected by the court's order, but just as a way of providing
23 some additional information to the court when it's dealing
24 with a pro se.

25 So, I don't think there's any problem with this.

1 I'm just going to ask my law clerks whether I've left
2 something out, made some terrible error or something. Then
3 we'll have finished.

4 (Brief pause.)

5 THE COURT: Okay. Well, unless there's anything
6 further, we'll adjourn and see everybody back next week.

7 MS. MALIZIA: Thank you, Judge.

8 * * * * *

9
10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

12 /s/ Joseph Rickhoff
13 Official Court Reporter

February 25, 2016